

REMARKS

Applicants thank the Examiner for the courtesy of a telephonic interview on January 23, 2006. Applicants' representatives, James Barta, Jr. and Mark Pitchford, discussed the invention and the cited reference in general with Examiner Patel and Supervisor Paula. In particular, Applicants discussed claim 1 and the Meyer (US 6,829,368) reference. No demonstration was given, no agreement was reached and no exhibit was shown.

Applicants have thoroughly considered the Office action dated April 21, 2006. Claims 16, 28, 39, and 45-50 have been amended by this Amendment A. Claims 1-50 are thus presented in the application for further examination. Reconsideration of the application as amended and in view of the following remarks is respectfully requested.

Claim Objections

Claims 16 and 28 are objected to for being described in a hybrid format and unclear. Applicants submit that claims 16 and 28 are proper as amended.

Applicants respectfully request that the objection to claims 16 and 28 be removed for at least the foregoing reasons.

Claim Rejections Under 35 U.S.C. § 101

Claim 39 stands rejected under 35 U.S.C. § 101 because the claim describes a data structure that does not perform steps and therefore represents nonfunctional descriptive material. Applicants submit that a data structure is not necessarily nonfunctional descriptive material (see *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)). In *Lowry*, the court addressed a data structure for storing, using, and managing data in a computer memory. The court based its decision in part on the fact that a physical change of a computer memory data structure (i.e., the recording of certain information and the interrelationship of the information) increased operational efficiency and functionality of a computer utilizing the memory. In the present invention, the data structure representing a file directory allows a computing device accessing the computer readable medium to display an image file

corresponding to a media file while rendering the media file. To this end, claim 39 as amended recites, "... wherein the application program displays the image file having the filename including the identifier value associated with the media file when the application program renders the media file." The data structure in claim 39 thus adds increased functionality and efficiency to a computer utilizing the claimed computer readable medium. Therefore, the data structure of claim 39 does not constitute nonfunctional descriptive material, and claim 39 is directed to patentable subject matter. Claims 40-44 depend from claim 39 and are believed to be patentable for at least the same reasons. Claims 40-44 claim a computer-readable medium having a data structure and further describe the functional relationship of elements of the data structure. Applicants respectfully request that the Examiner withdraw the rejection of claims 39-44.

Claim 45 stands rejected under 35 U.S.C. § 101 because it describes a filename that does not perform any steps or processes and is not tangible. Claim 45 as amended recites, "A computer-readable medium having stored thereon a data structure representing a filename for an image file associated with a media file...." The data structure corresponding to the filename allows a computing device accessing the computer readable medium to display an image file corresponding to a media file while rendering the media file. To this end, claim 45 as amended recites, "... wherein an application program executed by a computing device searches a file system associated with the computing device for the image file using the identifier value to display the image file while rendering the media content." The data structure in claim 45 thus adds increased functionality and efficiency to a computer utilizing the claimed computer readable medium. Therefore, the data structure of claim 45 does not constitute nonfunctional descriptive material, and claim 45 is directed to statutory subject matter. Claims 46-50 depend from claim 45 and are amended accordingly. Applicants respectfully request that the Examiner withdraw the rejection of claims 45-50.

Claim Rejections Under 35 U.S.C. § 102(a)

Claims 1-3, 8, 10, 15-16, 27, 29, 36, and 38 stand rejected under 35 U.S.C. § 102(a) as being anticipated by NPL-MusicMatch, MusicMatch Jukebox Users Guide, Feb. 7, 2003,

Chapters A1-A6 & 1-9 (the MusicMatch reference). Applicants respectfully submit that the MusicMatch reference fails to teach each and every element of the claims.

In any case, applicants submit herewith evidence (Exhibits A, B, and C) accompanying a declaration under 37 C.F.R. 1.131 that establishes applicants' prior invention. In particular, the evidence shows a reduction to practice of the claimed invention before the effective date of the MusicMatch reference. Therefore, this reference must be removed from consideration and claims 1-3, 8, 10, 15-16, 27, 29, 36, and 38 allowed.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 4-7, 9, 11-14, 22-24, 34-35, 37, 39, and 40-44 stand rejected under 35 U.S.C. § 103(a) by the MusicMatch reference in view of U.S. Patent No. 6,829,368 (Meyers). Applicants respectfully disagree.

In any case, with the MusicMatch reference removed from consideration, the Meyers reference fails to teach or suggest each and every aspect of the claimed invention. Applicants respectfully submit that claims 4-7, 9, 11-14, 22-24, 34-35, 37, 39, and 40-44 are in condition for allowance and respectfully request favorable reconsideration of this application.

Claims 17-28, 31-34, and 46-50 stand rejected under 35 U.S.C. § 103(a) by the Meyers reference in view of the MusicMatch reference. Applicants respectfully disagree.

In any case, with the MusicMatch reference removed from consideration, the Meyers reference fails to teach or suggest each and every aspect of the claimed invention. Applicants respectfully submit that claims 17-28, 31-34, and 46-50 are in condition for allowance and respectfully request favorable reconsideration of this application.

CONCLUSION

In view of the foregoing, Applicants submit that independent claims 1, 17, 29, 39, and 45 are allowable over the cited art. Claims 2-16, 18-28, 30-38, 40-44, and 46-50 depend from these claims and are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action and, as such, places the application in condition for allowance. Such allowance is hereby respectfully requested. Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

The Applicants wish to expedite prosecution of this application. If the Examiner deems the application as amended to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the application in condition for allowance.

The Commissioner is hereby authorized to charge \$120.00 for a one-month extension of time fee to Deposit Account No. 19-1345. The Commissioner is also authorized to charge any deficiency or overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,

/James J. Barta, Jr./

James J. Barta, Jr., Reg. No. 47,409
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

JJB/MAP/lav